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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of a Class A	)	MM Docket No. 00-10
Television Service	)	MM Docket No. 99-292
	)	RM 9260
	)	
	)	

To: The Commission

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("Paxson"), by its attorneys, submits herewith its comments in response to the Commission's Notice of Proposed Rule Making[1] to implement the Community Broadcasters Protection Act of 1999[2] and to prescribe regulations establishing a Class A television service for qualifying low power television ("LPTV") stations. Paxson owns the largest group of full power television stations in the country and has numerous analog and DTV construction permit applications pending before the Commission. Paxson owns a number of low power television stations as well.[3] Given the extensive implications that the Commission's proposed rules will have on full power television stations, Paxson has an important interest in the outcome of this proceeding.

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[1] Establishment of a Class A Television Service, *Notice of Proposed Rule Making*, MM Docket Nos. 00-10, 99-292, FCC 00-16 (rel. Jan. 13, 2000) ("*Notice*").

[2] Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)) ("CBPA").

[3] Paxson's LPTV stations are listed in Appendix A.

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I. THE COMMISSION SHOULD BROADLY APPLY THE PRIORITY CONGRESS GRANTED DTV STATIONS.

Congress was concerned that granting LPTV stations quasi-primary status could harm viewers' opportunity to receive digital service from full power broadcasters. Accordingly, Congress instructed the Commission affirmatively to make those modifications necessary to ensure the replication of full power broadcasters' service areas (or to permit maximization, to those qualifying) in the event "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment."[4] Congress took this extra step to give full power DTV stations priority over class A stations. If viewers of an analog station cannot receive the signal of the paired DTV station, then, if need be, class A stations must give way. Full power DTV stations can displace class A LPTV stations if replication is threatened.

The Commission must understand from the outset that, necessarily, the technical problems to which Congress refers will be largely unforeseen. To provide certainty, the Commission should announce that it will apply this priority for full power stations to the extent necessary to ensure that viewers have the ability to receive the digital signals of any analog station they already can receive. This will remind prospective LPTV class A licensees that the implementation of digital television remains in progress and places them on notice that their facilities still may be subordinated in the interests of viewers.

Although most problems will be unpredictable, the Commission may find that all broadcasters would benefit if it provides examples of technical problems that may act to displace class A stations. Paxson is aware of one contemporary possibility. The Commission's decision to commit to the single DTV transmission standard of 8-VSB increases the significance of

[4] 47 U.S.C. § 336(f)(1)(D).

antenna orientation difficulties for viewers.[5] Until presently unforeseeable technical improvements are achieved, viewers in metropolitan areas will have to align their receiver antennae in a narrow range if they hope to obtain reliable DTV service. Viewers effectively may not receive stations that do not transmit from the same location as most other area stations. Thus, the DTV transmission standards that the Commission has mandated will make it imperative for many DTV stations to relocate to local antenna farms so that viewers can receive signals of all broadcasters. If relocating a full power station would have an impact on a class A station, the CBPA requires the Commission to permit the relocation and prohibit the class A station from causing interference.

Congress authorized the Commission to change a full power station's authorized parameters or channel to resolve technical problems created by the implementation of the CBPA. Express grant of this authority in the CBPA shows that Congress intended that the Commission give applicants broader latitude for technical changes to cope with the effects of the CBPA than the Commission would have accorded them under its existing rules and policies. The Commission should make full use of this authority to ensure that full power broadcasters can complete their DTV implementation plans and should adopt a liberal waiver policy to give full power DTV stations the flexibility needed to modify their allotted parameters – especially in the early portions of the DTV transition period. This includes granting priority for alternative DTV allotments. The Commission must complete its unfinished DTV business and not permit class A stations to impair DTV replication.

[5] Letter from Magalie Roman Salas, Secretary, Federal Communications Commission, to Martin R. Leader, Counsel for Sinclair Broadcast Group, Inc., FCC 00-35 (Feb. 4, 2000).

II. THE COMMISSION MUST GIVE PENDING APPLICANTS FOR NEW STATIONS PRIORITY OVER CLASS A STATIONS.

The Commission has misinterpreted 47 U.S.C. § 336(f)(7)(A)(i) in proposing that pending applications for new stations would not be protected against Class A service.[6] Throughout the Commission's implementation of DTV, it has acted to protect the proposed allotments for qualifying pending applicants for new stations.[7] Congress enacted the CBPA on the background of the Commission's long-standing determination to protect these applications,[8] and no part of the CBPA explicitly reverses this protection. Moreover, LPTV licensees cannot claim to be unaware of the plans of pending applicants. As of November 29, 1999, the contours of the proposed stations were a matter of public record and known to prospective class A licensees. Accordingly, the Commission must continue its policy of protecting pending applicants for new stations and prohibit class A stations from precluding grant of the applications.

The Commission latches on to the phrase "transmitting in analog format" to propose that pending applications would not be protected. Section 336(f)(7), however, is written in the negative[9] and, accordingly, cannot be construed as the solitary source of authority for protecting full power stations against class A stations. In other words, the section does not represent the

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[6] *Notice* at ¶27.

[7] Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, 14639 (1997).

[8] *See Fogerty v. Fantasy, Inc.*, 510 US 517, 114 S.Ct. 1023, 1030 (1994), *citing Lorillard v. Pons*, 434 US 575, 580 (1978) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute). *See also Goodyear Atomic Corp v. Miller*, 486 US 174, 184 (1988) (Congress is presumed to know the existing law pertinent to the legislation it enacts).

[9] *I.e.*, "The Commission may not grant a class A license . . . unless. . ." 47 U.S.C. § 336(f)(7).

exhaustive set of conditions for protecting full power stations.[10] The Commission is permitted to adopt reasonable measures to protect full power stations. Allowing pending applicants to place their planned stations into operation is consistent with Congress' clear intent not to impair the ability of full power stations to serve their communities.

III. THE COMMISSION SHOULD PERMIT DTV-STYLE COORDINATION AND INTERFERENCE AGREEMENTS.

In implementing digital television, the Commission adopted a new paradigm for broadcast regulation that more closely resembles the free market. Full power broadcasters may reach voluntary channel coordination and interference agreements with fellow primary broadcasters, and the Commission will honor those arguments.[11] If LPTV stations now will obtain quasi-primary status, there is no sound basis to preclude class A licensees from entering into those arrangements as well. Given the spectrum constraints of the transition, there is every reason to give broadcasters the flexibility to resolve potential disputes and develop more efficient accommodations. Accordingly, the Commission should permit full power and low power broadcasters to enter into agreements as specified in Section 73.623(f) to resolve interference and related concerns or to obtain improved allotment arrangements.

IV. INTERFERENCE PROTECTION

The Commission should adopt the existing *de minimis* interference standard specified in section 73.623(c)(2) to determine interference protection between full power and class A stations. Additionally, the Commission should only consider first- and adjacent-channel operations when determining interference between full and low power stations. The so-called

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[10] See, *e.g.*, 47 U.S.C. § 336(f)(1)(D).

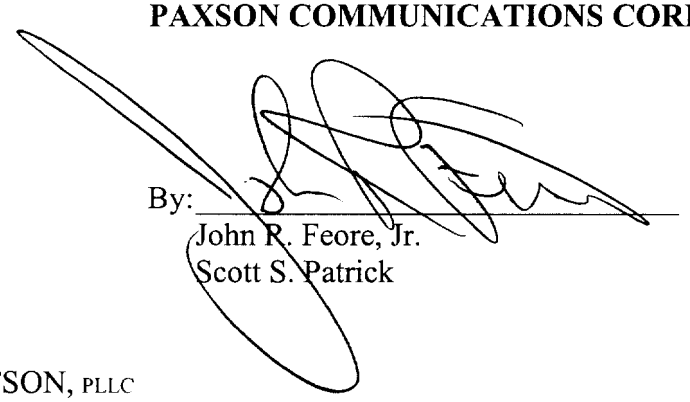
[11] 47 C.F.R. §73.623(f).

taboo protections should not be applied because an LPTV station's smaller service area generally would not be adversely affected.

For these reasons, Paxson asks the Commission to consider its comments.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION



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February 10, 2000

APPENDIX A
Low Power Television Stations Owned by Paxson Communications Corporation

Subsidiaries or affiliates of Paxson Communications Corporation are the licensees of W48AV, Detroit, Michigan; KPXG-LP, Portland, Oregon; KVPX-LP, Las Vegas, Nevada; WIPX-LP, Indianapolis, Indiana; WCPX-LP, Columbus, Ohio; WPXJ-LP, Jacksonville, Florida; WPXU-LP, Amityville, New York; W23BA, East Orange, New Jersey; WDPX-LP, Ft. Myers, Florida; WPXG-LP, Orlando, Florida; W42AM, Daytona Beach, Florida; K33DB, Houston, Texas; K17EN, Ft. Collins, Colorado; W54CN, Boston, Massachusetts; and WBPX-LP, West Palm Beach, Florida